STATE OF MICHIGAN

COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN, Plaintiff-Appellee,	UNPUBLISHED October 25, 2005
v	No. 254624 Jackson Circuit Court
JEFFREY ALLEN RUSSELL, Defendant-Appellant.	LC No. 03-000676-FC

Before: Kelly, P.J., and Meter and Davis, JJ.

PER CURIAM.

Defendant appeals as of right from his jury trial conviction for first-degree premeditated murder, MCL 750.316(1)(a). Defendant was also convicted of carrying or possessing a firearm when committing or attempting to commit a felony, MCL 750.227b. Defendant admitted to shooting his wife three times and then slitting her throat with a knife, but argued at trial that doing so was not premeditated. We affirm.

Defendant first argues that the trial court erred in admitting a photograph of the victim into evidence because the danger of unfair prejudice substantially outweighed the probative value of the photo. We disagree.

"The admission of photographic evidence is reviewed for an abuse of discretion." *People v Anderson*, 209 Mich App 527, 536; 531 NW2d 780 (1995). In general, all relevant evidence is admissible. MRE 402. The only issue at trial was whether defendant acted with premeditation. Premeditation may be inferred from a defendant's actions after the killing. *People v Berry* (*On Remand*), 198 Mich App 123, 128; 497 NW2d 202 (1993). The photograph showed the lower portion of the victim's face splattered with blood, a blanket or sweater covering her chest, and a pool of blood obscuring her neck. A knife blade is shown lying in the pool of blood. We find that the knife's presence lying on the victim's neck is more consistent with calm and careful action than "frenzied" action, so it suggests deliberation and methodology. However, relevant evidence may be excluded if its probative value is substantially outweighed by the danger of unfair prejudice. MRE 403. Although the amount of blood in the photograph is unsettling, no actual wounds are clearly visible, and it does not even show much of the victim's face. We find it unlikely that the photo would lead the jury to abdicate its truth-finding function and convict on passion alone. *Anderson, supra.* Therefore, the trial court did not abuse its discretion in admitting the photo into evidence.

Defendant next argues that there was insufficient evidence of premeditation, so his conviction should be vacated. We disagree.

A claim that evidence was insufficient to support a conviction raises an issue of law that is reviewed de novo. *People v Mayhew*, 236 Mich App 112, 124; 600 NW2d 370 (1999). When examining a claim of insufficient evidence, we view the evidence in the light most favorable to the prosecution to determine whether a rational trier of fact could find the defendant guilty beyond a reasonable doubt. *People v Akins*, 259 Mich App 545, 554; 675 NW2d 863 (2003). "Circumstantial evidence and reasonable inferences that arise from the evidence can constitute sufficient proof of the elements of the crime." *Id*.

The elements of first-degree murder are that the defendant killed the victim and that the killing was willful, deliberate, and premeditated. *People v Bowman*, 254 Mich App 142, 151; 656 NW2d 835 (2002). Premeditation requires some span of time between the initial homicidal thought and that killing sufficient to allow a reasonable person to take a "second look." *People v Gonzalez*, 468 Mich 636, 641; 664 NW2d 159 (2003). Here, the argument between defendant and the victim where the victim allegedly admitted to infidelity occurred almost four hours before the shooting. In the meantime, defendant had to go to the basement, obtain a pair of pliers, pry a padlock off his gun cabinet, and return to where the victim was before shooting her. Defendant had sufficient time for a "second look" before the killing.

Defendant finally argues that the trial court erred by refusing to instruct the jury on voluntary manslaughter because there was evidence of provocation presented. Claims of instructional error are reviewed de novo. *People v Marion*, 250 Mich App 446, 448; 647 NW2d 521 (2002). We find no error.

Manslaughter is a necessarily lesser included offense of murder, so the jury should be instructed on manslaughter if it is "supported by a rational view of the evidence." *People v Mendoza*, 468 Mich 527, 541; 664 NW2d 685 (2003). There must be a sufficient dispute over the element or elements differentiating the charged and lesser offenses that a jury could consistently find the defendant not guilty of the charged offense but guilty of the lesser offense. *People v Cornell*, 466 Mich 335, 352; 646 NW2d 127 (2002). The elements of manslaughter are "(1) the defendant must kill in the heat of passion, (2) the passion must be caused by an adequate provocation, and (3) there cannot be a lapse in time during which a reasonable person could control his passions." *People v Sullivan*¸ 231 Mich App 510, 518; 586 NW2d 578 (1998). Even assuming defendant presented evidence of substantial provocation, the provocation occurred several hours before the killing, so a lack of time for cooling off could not be supported by a rational view of the evidence. Therefore, defendant was not entitled to an instruction on manslaughter.

Affirmed.

/s/ Kirsten Frank Kelly
/s/ Patrick M. Meter
/s/ Alton T. Davis